



NATIONAL OCEAN
INDUSTRIES ASSOCIATION



US Oil & Gas
Association



Domestic
Petroleum
Council



April 22, 2005

Department of the Interior
Minerals Management Service
381 Elden Street
Mail Stop 4024
Herndon, VA 20170-4817

ATTN: Rules Processing Team (Comments)

RE: Advance Notice of Proposed Rulemaking – Recovery of Costs Related to the Regulation of Oil and Gas Activities on the Outer Continental Shelf – AD23 (March 25, 2005).

Dear Sir or Madam:

As representatives of the Nation's natural gas and oil industry, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the International Association of Geophysical Contractors, the National Ocean Industries Association, the Natural Gas Supply Association, the Offshore Operators Committee, and the US Oil & Gas Association appreciate the opportunity to respond to your request for comments on the advance notice of proposed rulemaking (ANPR). Our eight national trade associations represent thousands of companies, both majors and independents, engaged in all sectors of the U.S. oil and natural gas industry, including exploration, production, refining, distribution, marketing, equipment manufacture and supply, geophysical, and other diverse offshore support services. Either directly or indirectly, we are all working to explore for and produce hydrocarbon resources from the nation's Outer Continental Shelf (OCS) in an environmentally sensitive manner. The ANPR, therefore, is of particular importance to us.

The ANPR solicits comments, recommendations, and specific remarks on a proposal to impose new fees for reviewing certain plans and permit applications that have previously been treated as a part of the cost of administering the lease for which the government has already been compensated through bonus bids, rentals, and royalties. The fees are being considered for

exploration plans, development and production plans, deepwater operations plans, applications for permits to drill, applications for permits to modify, applications to remove a platform, platform approvals, conservation information documents, geological and geophysical permits, and sand and gravel permits.

While the undersigned associations recognize that the Minerals Management Service needs sufficient revenue to fund its activities, we do not agree that the agency's legal authority and policy guidance require the new fees or that the fees are required to fund the agency's activities. Furthermore, we are concerned that the new fees are duplicative and could discourage exploration activity at a time when there is great concern about energy supply in this country, as expressed by the President's National Energy Policy Development Group and the United States Congress.

Offsetting MMS' Costs

The proposed rule purports to establish fees in order to offset the costs of the Minerals Management Service to conduct certain services. However, the document cited by the agency, OMB Circular A-25, provides that new user charges should not be proposed in cases where other revenues from individuals already finance the government services provided to them. Lessees have already paid substantial amounts, often millions of dollars, to obtain leases and submit substantial annual rental payments in order to maintain the leases. The "services" proposed for additional fees are all directly related to exploration, development and production of oil and gas reserves. It does not make sense that there should be additional fees imposed now to process applications that the agency has determined companies need to file in order to develop and produce the reserves on submerged lands that the agency has leased to those companies.

Legal Authority and Policy Guidance

The ANPR cites the Independent Offices Appropriation Act of 1952 and OMB Circular A-25 as authority for the proposed rule. Cited in the proposed rule is the guidance that "[w]hen a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a charge will be imposed to recover the full costs to the Federal Government for providing this specific benefit, or the market price. The general policy is that user charges will be instituted through the promulgation of regulations."

However, existing leases do not contain provisions allowing for the new fees, and no regulations existed at the time of lease issuance that allowed the imposition of these fees. In Mobil Exploration and Producing Southeast, Inc. v. United States, 530 U.S. 604 (2000), the U.S. Supreme Court ruled that regulations to impose permit fees subsequent to the issuance of a lease are not within the scope of the contract. The Court stated that a provision in the lease subjecting lessees to "all other applicable . . . regulations" must include only statutes and regulations already existing at the time of the contract. The Court further clarified that leases would be subject to all regulations issued pursuant to the Outer Continental Shelf Lands Act in the future

which provide for “the prevention of waste and the conservation” of mineral resources. Permit fees have no connection to the prevention of waste and the conservation of mineral resources. Therefore, regulations imposing them on existing leases are not within the scope of the lease contracts and would not be incorporated into the contracts.

Specific Questions

1. *Are there other actions for which MMS should require fees to recover costs from operators?* We disagree with the premise that MMS should require additional fees to recover costs for the actions cited in the ANPR. The federal government is already compensated for the agency’s work through the bonus bids and rents paid to the government for the lease. Furthermore, we do not believe there are any other actions that should require double payment from the operator.
2. *MMS plans to calculate the fees in a manner similar to that used in the recently published Cost Recovery Rule (RIN 1010-AD16, 70 FR 12626). Are there alternative ways to determine fair and equitable fees?* In addition to being duplicative, the fee schedule proposed in Rule AD16 is arbitrary and is unsupported by cost data for the “services” identified. Furthermore, in order to determine whether a fee is fair and equitable, one must determine whether the administering agency has updated and improved its systems and processes in order to cut costs. We recommend that the MMS continue its efforts to improve its cost effectiveness in administering its program.
3. *MMS may have large cost differences associated with issuing permits and reviewing plans in the different regions (GOM, Pacific, Alaska); should the fee be uniform nationwide or vary by region?* As already discussed, the additional fees should not be imposed at all. If, however, additional fees were to be imposed, they should be based on the actual costs. Therefore, if actual costs are different in different regions, then the costs should vary by region.

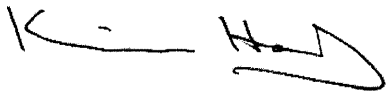
National Energy Policy

This Administration has strongly voiced its commitment to a national energy policy that will secure our nation’s energy security in the future. However, the ANPR seeks to “double dip” by collecting additional money for activities for which the U.S. Government has already been compensated. Every additional dollar collected on such duplicative fees is a dollar not being directed toward producing additional energy within the United States. And, additional energy produced also produces additional royalty revenue for the government. We urge the Administration to put actions behind its words, and focus on producing additional energy and revenue for the long-term, rather than imposing duplicative fees for the short-term that will be counterproductive.

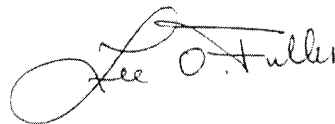
Thank you again for considering our comments on the ANPR. If you have any questions or need

additional information, please feel free to contact Kim Harb at (202) 347-6900.

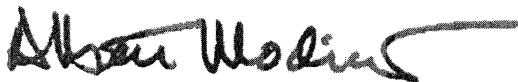
Sincerely,



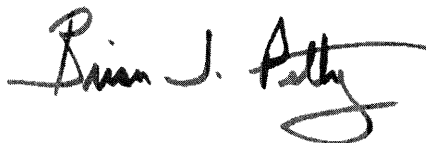
National Ocean Industries Association



Independent Petroleum Association of America



US Oil & Gas Association



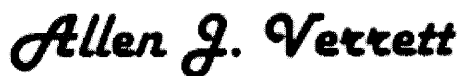
International Association of Drilling Contractors



Domestic Petroleum Council



Natural Gas Supply Association



Offshore Operators Committee



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